Supreme Court, U.S.
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No. 92-306

In The

Supreme Court of the United States

October Term, 1992

JEROME B. ROSENTHAL,

Petitioner,

vs.

ROBERT NOLAN CONRAD, A LAW CORPORATION, ROBERT NOLAN CONRAD, and HARLAN N. GREEN, A PROFESSIONAL CORPORATION

(Real Parties in Interest)

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of California, Second Appellate District (And To The California Supreme Court)

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Petitioner is a disbarred attorney who practiced law for nearly 50 years before having his license withdrawn for numerous acts of fraud and other misconduct involving a client. Petitioner is currently incarcerated on a contempt citation resulting from post-trial matters in this case. Although Petitioner's background makes it clear that the incoherency of the Petition for Writ of Certiorari cannot be excused as the inarticulate rambling of an unlearned Pro Se, it is nevertheless difficult to respond in an orthodox fashion, particularly because the "questions presented" are inconsistent with the relief sought by the petition. For this reason, Respondents do not reframe the questions presented, but instead attempt to state, in simple terms, why no constitutional issue is present and why Petitioner cannot seek review by this Court.

Four matters of importance took place in this case:

1. There was a lengthy jury trial, in which Respondents were awarded substantial actual and punitive damages against Petitioner;

2. There was an appeal by Petitioner on the merits from the jury verdict to the California Court of Appeal and California Supreme Court. The verdict was upheld in all respects and substantial sanctions were imposed against Petitioner and his counsel for filing a frivolous and bad faith appeal;

3. There was a post-trial judgment debtor examination of Petitioner, during which he refused to testify concerning the whereabouts of his assets. After having been

ordered to answer, and refusing, Petitioner was adjudged in contempt and sentenced to jail; and

4. There were Petitions for extraordinary writs filed by Petitioner with the California Court of Appeal and California Supreme Court to seek appellate review of the contempt order. The contempt order was upheld, and after Respondents were invited by the California Supreme Court to apply for additional sanctions from the California Court of Appeal, the Court of Appeal imposed additional sanctions against Petitioner and his counsel for filing frivolous writ applications concerning the contempt order.

Although Petitioner's questions presented suggest that Petitioner seeks review of certain aspects of the appeal from the jury verdict and the propriety of the contempt order, the following statement from Petitioner's brief makes it clear that Petitioner in fact does not seek such review, but is merely complaining that, in the abstract, the legal principles which Petitioner believes were applied by the California courts were improper:

> "Petitioner does not seek determination on the merits of the individual facts or detailed consideration of the merits of the affirming of underlying judgment or of the imposition of writ-generated sanctions." (Petitioner, page 25).

If it is true that Petitioner does not seek review of the underlying judgment or the order of contempt, this court should summarily deny the Petition. Respondents will, however, briefly address the additional reasons why the petition should be denied:

A. In order for Petitioner to obtain review of the proceedings below, Petitioner must comply with the requirements of Rule 10 of the Rules of the Supreme Court. Petitioner has not complied, since:

(1) The Petitioner does not seek reconciliation of conflicting decisions of United States Courts of Appeals;

(2) There is no decision of a United States Court of Appeals which conflicts with a state court decision of last resort;

(3) There is no unusual deviation from an accepted or unusual course of judicial proceedings; and

(4) There is no important question of federal law nor any decision which conflicts with applicable decisions of this Court.

B. In order for Petitioner to demonstrate that his due process rights have been violated, Petitioner must demonstrate that (1) he was denied notice and the right to a hearing; or (2) he was unconstitutionally treated differently from those similarly situated. The Petition fails to show that either occurred since:

(1) Petitioner, through his counsel, had notice of the argument before the California Court of Appeal (and argued on Petitioner's behalf);

(2) Petitioner had a full opportunity to litigate all issues, including sanctions, before various state appellate tribunals; and

(3) Petitioner's case was treated, in all respects, in accordance with well settled rules of appellate procedure, and was not given any different, special, unusual, or unfair treatment.

C. Petitioner has failed to show that any action of any California appellate court was so arbitrary that it amounted to a denial of due process. The decision of the Court of Appeal to award sanctions for the filing of the frivolous appeal and the frivolous writs was made only after Petitioner and his counsel were informed that Respondents would seek such sanctions, and after ample opportunity was given to both sides to brief and argue the issue. The imposition of sanctions was made in accordance with well-settled law in California which articulates objective standards under which the conduct of appellants is measured. Petitioner is simply not satisfied with the results reached by the state appellate courts. Petitioner's dissatisfaction at losing the case does not mean that Petitioner was denied due process, particularly when Petitioner does not demonstrate that the decisions of the state appellate courts were based on any personal animosity toward him.

Mindful of the requirements of Rule 14, Respondents submit that the petition is replete with misstatements, and address the most significant of such misstatements by submitting that the true facts are as follows:

1. Petitioner in fact had notice of the argument in California Court of Appeal, since he was

represented by counsel who appeared and argued on his behalf;

2. Petitioner in fact has no right to counsel in an appeal from a civil case, nor did Petitioner have any absolute right to oral argument at the appellate level (although Petitioner's counsel appeared and argued);

3. Petitioner has not accurately nor truthfully recited the facts of the underlying case, since the facts thereof as articulated by the opinion of the California Court of Appeal contradict and supersede Petitioner's self-serving recitation of the facts; and

4. Each of Petitioner's arguments has been presented to and specifically rejected by the California Court of Appeal and the California Supreme Court.

RESTATEMENT OF THE CASE

The underlying action concerned a dispute over ownership of a contingent legal fee. After a lengthy jury trial in which Petitioner was represented by Attorneys Arnold G. Regardie and Edwin J. Klein, Respondents were determined to be the owners of the fee. The jury found that Petitioner had unlawfully interfered with Respondents' right to receive the fee, awarding Respondents substantial actual and punitive damages. In post-trial proceedings, Petitioner was asked in a judgment debtor examination to answer questions about his assets. Petitioner refused to answer, was ordered to answer, persisted in his refusal, was held in contempt and sentenced

to jail until such time as he is willing to answer. Petitioner's incarceration was stayed pending review by the California Court of Appeal.

The California Court of Appeal denied Petitioner's application for relief from the order of incarceration. Petitioner was incarcerated, and remains incarcerated to this day. Petitioner's request that the California Supreme Court review the contempt order was denied. The California Supreme Court found Petitioner's arguments on the contempt issue to be so meritless that the Court invited counsel for Respondents to re-apply to the Court of Appeal for sanctions (which were ultimately granted).

Petitioner also sought appellate review of the merits of the jury verdict. The California Court of Appeal affirmed the jury verdict, and imposed sanctions of $34,000 against Petitioner and his attorney, Mr. Regardie, for filing a frivolous and bad faith appeal from the jury verdict. The Court of Appeal at the same time awarded Respondents additional sanctions against Petitioner and his other former lawyer, Mr. Klein (who died during the pendency of the appeal of the jury verdict) for the filing of frivolous applications for appellate review of the contempt order. Petitioner sought rehearing of the Court of Appeal's decision on the jury verdict and sanctions, which the Court of Appeal denied. Petitioner's Petition for Review by the California Supreme Court of the jury verdict and the sanctions was denied.

Attorney Regardie represented Petitioner in his appeal to the California Court of Appeal from the jury verdict. Attorney Klein represented Petitioner during his

applications to the California Court of Appeal and California Supreme Court on the contempt citation. After the briefs on the jury verdict were filed, Mr. Regardie requested that the Court of Appeal relieve him as Petitioner's counsel. This request was taken under submission by the Court of Appeal. Since Mr. Klein died during the appeal, Mr. Regardie appeared at oral argument and argued on behalf of Petitioner. Mr. Regardie further requested and was granted the right to submit an additional brief, which he filed. Mr. Regardie addressed his oral argument to the merits of the appeal and the question of sanctions for frivolous appeal. The written briefs contained an exhaustive discussion of both issues.

When the Court of Appeal issued its decision affirming the verdict and imposing the sanctions, the Court also relieved Mr. Regardie of any further obligation to represent Petitioner in appellate proceedings. Mr. Klein had died by this time, and Petitioner subsequently filed his Petition for review of the jury verdict and sanctions by the California Supreme Court in Propria Persona.

Thus, while it is true that Petitioner was not personally present during oral argument at the Court of Appeal, Petitioner was represented by counsel. Mr. Regardie was duly served under California law with all briefs and was of course, aware of the oral argument since he appeared and argued on Petitioner's behalf at same. Following the decision of the Court of Appeal, Petitioner represented himself in all further appellate proceedings.

Petitioner has been criticized in reported decisions of both State and Federal courts for having filed appeals in bad faith and for the sole purpose of delay, for having

committed perjury and for other acts of egregious professional misconduct.[1] This petition appears to be simply another in the long line of Petitioner's bad faith, frivolous appeals.

I

PETITIONER WAS NOT DENIED DUE PROCESS

A. Petitioner Was Not Denied Due Process In The Contempt Proceedings.

Petitioner's argument on the contempt order is two-fold: (1) that there were procedural irregularities which were not brought to the attention of the appellate courts; and (2) that certain federal cases pertaining to the exercise of Petitioner's right against self-incrimination were misapplied by the state courts.

Petitioner's claim that certain evidence was not presented to the California Court of Appeal or the California Supreme Court is not a constitutional question. If Petitioner's counsel did not present arguments to the state appellate courts, Petitioner will undoubtedly pursue his remedies against his counsel, but no denial of due process can result when counsel in a civil appellate matter fails to present certain arguments which his client apparently believed were persuasive. In addition, Petitioner himself actually argued these purportedly egregious

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[1] See: *Doanbuy Lease & Co., Inc. v. Melcher* (1971) 83 New Mexico 82, 488 P.2d 339; *Dallas Cabana, Inc. v. Collier* (5th Cir. 1972) 469 F.2d 606; *Rosenthal v. State Bar* (1987) 43 Cal.3d 612; *Day v. Rosenthal* (1985) 170 Cal.App.3d 1125; *Young v. Rosenthal* (1989) 212 Cal.App.3d 96.

issues to both the California Court of Appeal (See, Appendix "K", [Petitioner's Petition for Rehearing] and Appendix "O", [Petitioner's Petition for Review by the California Supreme Court]). However, both tribunals rejected Petitioner's arguments.

Petitioner's claim that the federal law was misapplied is also incorrect. As the California Court of Appeal noted in its decision awarding sanctions for the frivolous writs filed by Petitioner after the contempt order, Petitioner's fifth amendment claim was determined under the controlling California case of *Troy v. Superior Court* (1986) 186 Cal.App.3d 1006. The Court of Appeal discussed the *Troy* case at length (See Appendix C to Petition, at pages 8-12), and specifically determined that the *Troy* case does not conflict with the federal decisions cited by Petitioner (See Appendix C to Petition, at page 11, fn.3).

Petitioner has not demonstrated that the decision by the California Court of Appeal was erroneous in any respect.

B. Petitioner Was Not Denied Due Process With Regard To The Appeal From The Jury Verdict.

As Respondents have already demonstrated, there were no irregularities in the appeal from the jury verdict. Petitioner and his counsel were on notice prior to the submission of their final brief and prior to oral argument before the California Court of Appeal that Respondents were of the view that the appeal was frivolous and that sanctions would be requested. Counsel for Petitioner appeared, argued, and submitted an additional post-

argument brief. Petitioner himself sought rehearing (and in doing so, brought to the attention of the California Court of Appeal all the matters which he contends were not adequately presented by his counsel). Petitioner himself then sought review by the California Supreme Court (and again focused on matters which he claims his attorney did not adequately present).

Although Petitioner suggests that the state courts did not consider his appeal because of some vaguely-described personal animosity, Petitioner has presented no facts to substantiate this argument.

II

CONCLUSION

Petitioner's entire history as a litigant, thoroughly documented in this case, in other State Courts and Federal Courts as well, demonstrates Petitioner's lack of good faith. This Petition is no different.

Respondents filed their lawsuit against Petitioner in 1985. The trial court and the jury agreed that Respondents were legally and equitably correct. The California Court of Appeal agreed. The California Supreme Court agreed. Respondents urge that this Court bring to an end

Petitioner's quixotic journey through the legal system by denying Petitioner's Certiorari Petition.

DATED: September 11, 1992

Respectfully submitted,

FIERSTEIN & STURMAN LAW CORPORATION

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